STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 21, 2003
v	No. 237893 Kent Circuit Court
LADON DEMARCO CLOUD, Defendant-Appellant.	LC No. 00-011663-FH

Before: Whitbeck, C.J. and Smolenski and Murray, JJ.

PER CURIAM.

Defendant Ladon Cloud appeals as of right from his jury trial convictions for attempted possession with intent to deliver cocaine over 650 grams[1] and conspiracy to possess with the intent to deliver cocaine over 650 grams.[2] The trial court sentenced Cloud to 20 to 50 years' imprisonment on both counts. We affirm.

I. Basic Facts And Procedural History

On April 24, 2000, Kent County Narcotics Officer Scott Malkewitz was contacted by police informant Jaime Rodriguez who told Malkewitz that he had been contacted by Cloud to purchase two kilos of cocaine. Malkewitz had Rodriguez contact Cloud later that day by phone in order to set up the time and place for the drug purchase. Two kilos of cocaine were taken from the vice vault to complete the transaction.

Malkewitz testified that the transaction was originally to take place at a bar in Grand Rapids, with an officer videotaping the incident. However, during the initial meeting in the parking lot of the bar, the meeting place was changed to a nearby restaurant. Codefendant Gregory Moore, who pleaded guilty to separate offenses, was also present in the parking lot, with two large bags of money. After Cloud and Moore left the parking lot of the bar to go to the new meeting place, Rodriguez met with narcotics officers to obtain the two kilos of cocaine before meeting up with defendants again at the restaurant. Rodriguez testified that when he met with

[1] MCL 333.7401(2)(a)(i).

[2] MCL 750.157a.

Cloud in the parking lot behind the restaurant, Cloud again requested the transaction be moved to a nearby park because there were too many people around the restaurant. Cloud's request to move the buy to another location caused the police to be concerned about Rodriguez's safety.

Police Sergeant David Jones testified that he gave the order to stop just the *informant* Rodriguez from leaving the restaurant parking lot but the order was misinterpreted and the officers actually moved in and arrested defendants. Another member of the Kent County Narcotics Team, Harry Roelofs, actually arrested Cloud and Moore. The police found $56,000 in the car with defendants. Cloud testified that the money was not his and that he had no money. However, Cloud also testified that he was in Grand Rapids to purchase DVD players and a truck from Rodriguez's brother.

Following closing arguments, the trial judge read the jury instructions. The trial judge did not follow the standard jury instructions verbatim for each offense and intent requirement. Rather, the trial judge described the standard jury instructions in his own words, replete with examples and comparisons. The trial judge paraphrased the standard jury instructions in the following order: prosecution's burden of proof, the crime of conspiracy and the agreement/membership requirement, the crime of possession with intent to distribute, specific intent, attempt and aiding and abetting, and the abandonment defense. The jury returned a verdict of guilty as charged.

II. The Jury Instruction

A. Standard Of Review

We review claims of instructional error de novo.[3] Jury instructions are to be read as a whole rather than extracted piecemeal to establish error.[4] The reviewing court must balance the general tenor of the instructions in their entirety against the potentially misleading effect of a single isolated sentence.[5] Even if somewhat imperfect, instructions do not create error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights.[6]

B. Deference To The Michigan Criminal Jury Instructions

Cloud initially contends that the trial court should have read *only* the Michigan Criminal Jury Instructions and that elaborating on the boilerplate language contained in the standard instructions led to confusing, misleading and prejudicial jury instructions. Because the tenor of this argument is that the trial court's failing to read verbatim from the criminal jury instructions is an aberration of criminal procedure, we first address the deference a trial court must afford those standard criminal jury instructions.

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[3] *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996).

[4] *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001).

[5] *People v Freedland*, 178 Mich App 761, 766; 444 NW2d 250 (1989).

[6] *Aldrich*, *supra* at 124.

The criminal jury instructions are encouraged to be examined or referred to *but are not required to be followed.*[7] Furthermore, so long as there are no significant distortions or misstatements, the organization of the instructions is up to the trial court.[8] For example, a court does not have to follow the exact language of the standard instructions with respect to specific intent so long as the jury is adequately instructed as to the requisite specific intent.[9] Finally, MCL 768.29 provides:

> The court shall instruct the jury as to the law applicable to the case and in his charge make such comment on the evidence, the testimony and character of any witnesses, as in his opinion the interest of justice may require.

Based on the above, we conclude that Cloud's argument that the trial court erred by not following the standard criminal jury instructions has no merit. The law makes clear that substance prevails over form when it comes to effective jury instructions. Simple logic and common sense dictate that there will be legal principles that arise in any trial which require some explanation, exemplification and elaboration for a jury's benefit. Therefore, regardless of the manner in which the instructions are given, as long as the instructions include all the elements of the crime charged and consider all material issues, defenses, and theories for which there is evidence in support, reversal is not required.[10]

C. Prejudice

The crux of Cloud's argument is that he was unfairly prejudiced by misleading and confusing jury instructions. Cloud argues this point by repeatedly comparing the trial court's jury instructions to the standard criminal jury instructions. For instance, Cloud points to the instruction on the charge of conspiracy as being misleading and confusing. However, Cloud never analyzes the transcript of the conspiracy instruction to support his conclusion that the instruction was misleading. Rather, Cloud recites the standard criminal jury instruction for conspiracy, including the elements of agreement and membership, and then simply quotes eleven pages from the transcript, highlighting part of the instruction regarding specific intent.

Cloud takes a similar approach for his claim that the specific intent, attempt and abandonment instructions were misleading and confusing. Cloud again cites the standard criminal jury instructions for specific intent, attempt and abandonment, and then quotes at length from the trial court's instructions, highlighting various sections where the trial court provided examples to demonstrate a legal principle. Cloud then concludes that providing an example of what constitutes mere preparation for attempt was highly improper. Again, Cloud provides no

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[7] *People v Stephan*, 241 Mich App 482, 496; 616 NW2d 188 (2000), quoting December 1991 supplement, Michigan Criminal Jury Instructions, 2d ed, p xi, the Hon. William J. Caprathe, Chairperson of the Michigan State Bar Standing Committee on Standard Criminal Jury Instructions (emphasis added).

[8] *People v Smith*, 3 Mich App 614, 616; 143 NW2d 160 (1966).

[9] *People v Freeman*, 149 Mich App 119, 125; 385 NW2d 617 (1985).

[10] *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000).

analysis of the instructions to make these conclusions. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims.[11] In any event, based on the entirety of the instructions given, the trial court fairly presented the issues to be tried and sufficiently protected Cloud's rights

The trial court initially instructed the jury on the crime of conspiracy and the agreement element that is required between two or more persons. The trial court then elaborated on the agreement aspect of a conspiracy by instructing the jury that the agreement must be intending and expressing the same purpose but that no formal agreement is necessary. The trial court made clear that the agreement between the parties must have been to accomplish the crime with which they were charged:

> In this particular case though, we're not dealing with an allegation to commit some crime. There is an allegation to commit a specific crime. And that is that there was an agreement or mutual understanding to acquire for purposes of later distribution 650 or more grams of cocaine. Therefore, the evidence at this trial has got to prove to you that that was the objective of the agreement or understanding between Mr. Cloud and Mr. Moore. I'm going to give you some alternatives dealing with lesser amounts in a moment. But the basic thing here is that the claim was there was an agreement or understanding to acquire for later distribution a quantity of cocaine.

The trial court also instructed that the evidence presented, when applied to the elements of conspiracy, must show beyond a reasonable doubt that Cloud had an agreement to acquire and distribute 650 grams of cocaine. Finally, the trial court summarized the specific intent requirement by stating:

> What the evidence must establish is that Mr. Cloud knew the object of the conspiracy and that he deliberately became a party to it intending to help effectuate that object. It's not significant whether he intended to play a big part, a small part, so long as he intended to play a part and intended for the end result to be the acquisition by him, or by Mr. Moore, or by both of them, of cocaine for purposes of delivering it.

The trial court next instructed the jury regarding the issue of accomplice liability and the intent requirements for attempt:

> If you help someone purely by accident, you don't mean to help them just so happens that coincidently you do something which helps, clearly, you're not guilty of anything. If, on the other hand, you help somebody meaning to help somebody to commit a crime, then you are an [accomplice]. And under Michigan law an [accomplice] is just as guilty of the crime as the person who actually commits it.

[11] *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997).

Following the accomplice instructions, the trial court then explained the concept of going beyond "mere preparation" for an attempt crime. The trial court used three examples of going beyond mere preparation that Cloud now claims were highly improper and favored the prosecution's evidence. The trial court initially prefaced the examples given by stating:

> Mr. Cloud's actions must go beyond mere preparation to the point where the crime would have been completed, in all likelihood, if it had not been interrupted by outside circumstances. Let me give you an example here, an example that deals with a completely different crime. *And I use a completely different one so nobody can misread the example as a suggestion as to how you should decide this case.* [Emphasis added.]

The trial court then illustrated the legal principle of mere preparation by introducing a hypothetical where a person plotting a murder thinks of various ways to commit the crime and even "scopes out" a location ahead of time, but is arrested the morning before he actually takes up the position to kill his victim. The trial court used a variation on this example to show going *beyond* mere preparation by having the hypothetical killer going to the spot where he decided the murder would take place and doing everything but squeezing the trigger before the police, who were watching him, moved in and interrupted him. Finally the trial court demonstrated an attempted crime by giving an example where a pickpocket intends to take a wallet, but there is no wallet in the pocket of his victim.

Cloud argues that the trial court's examples took away from the province of the jury the issue of whether he had the necessary requisite intent needed to convict and whether his actions went beyond mere preparation. However, Cloud never supports this conclusion with analysis. He merely asserts that the instructions given were misleading and confusing compared with the standard instructions. Thus, under Cloud's approach *any* deviation from a verbatim account of the standard criminal jury instructions is confusing and misleading. We observe, again, that there is simply no analysis of how the instructions given could have misled or unfairly prejudiced the jury. Rather, Cloud announces his position and then leaves it to this Court to discover and rationalize the basis for his claims.[12]

We conclude, in any event, that the trial court's examples were not misleading, prejudicial or confusing. On the contrary, the examples provided cogent illustrations of a difficult legal principle. Therefore, we conclude that the jury instructions in this case fairly presented the issues to be decided and sufficiently protected Cloud's rights at trial.[13] The trial court informed the jury as to all the elements of the crimes charged and theories for which there was evidence in support.[14] Further, despite the length of the instructions given or the apparent deviation from the boilerplate language contained in the standard criminal jury instructions,

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[12] *Id*.

[13] *Aldrich*, *supra* at 124.

[14] *Canales*, *supra* at 574.

because the elements of each offense were provided in a clear and intelligent manner, the trial court successfully provided the instructions.[15]

Affirmed.

/s/ William C. Whitbeck
/s/ Michael R. Smolenski
/s/ Christopher M. Murray

[15] *People v Mann*, 395 Mich 472, 478-479; 236 NW2d 509 (1975).